STATE OF MICHIGAN
IN THE SUPREME COURT

THE PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

KAMERON LEO KILGO
Defendant-Appellant. **No. 151076**

L.C. No. 14-009613–01-FH
COA No. 325582

SUPPLEMENTAL ANSWER IN OPPOSITION TO APPLICATION FOR INTERLOCUTORY LEAVE TO APPEAL PRIOR TO DECISION OF THE COURT OF APPEALS, IN ACCORDANCE WITH THE ORDER OF MAY 27, 2015

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Statement of the Question

I.

In *People v Cash*[1] this Court held that a mistake-of-age defense is not constitutionally mandated. Defendant identifies no decision in the country since that decision—and the People cannot locate one—reaching a different result, save a state constitutional decision in Alaska, while many decisions have rejected the claim. Should *Cash* be revisited?

Defendant answers: YES

The People answer: NO

Statement of Facts

There is no evidentiary record in this case. Defendant seeks to raise a mistake-of-fact defense regarding the age of the victim in this criminal sexual conduct case, arguing that it is compelled by the Constitution. He applied for leave to appeal in the Court of Appeals, and a by-pass application with this Court. The Court of Appeals denied leave to appeal; this Court has ordered supplemental briefing on the by-pass application.

[1] *People v. Cash*, 419 Mich. 230 (1984).

Argument

I.

In *People v Cash*[2] this Court held that a mistake-of-age defense is not constitutionally mandated. Defendant identifies no decision in the country since that decision—and the People cannot locate one—reaching a different result, save a state constitutional decision in Alaska, while many decisions have rejected the claim. *Cash* was correctly decided, and should be followed under principles of *stare decisis*, the creation of any mistake-of-fact defense being a matter for the legislature.

> *[F]ederal courts uniformly have rejected claims that the Constitution requires the government to prove that a defendant charged with statutory rape knew that the victim was underage, or that such a defendant has a constitutional right to the defense that he made a reasonable mistake as to the victim's age.*[3]

Introduction

This Court has directed supplemental briefing on defendant's interlocutory application for leave to appeal as to "(1) whether this Court's decision in *People v. Cash*, 419 Mich. 230, 351 N.W.2d 822 (1984), remains viable; and (2) whether the denial of the ability to assert the defense of reasonable mistake of age or fact violates due process or equal protection principles." *Cash* confronted and squarely rejected[4] the claim that a mistake-of-age defense is constitutionally required

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[2] *People v. Cash*, 419 Mich. 230 (1984).

[3] *United.States v. Wilcox*, 487 F.3d 1163,1174 (CA 8, 2007).

[4] The majority opinion for the 5-2 Court was written by Chief Justice Williams, and joined by Justices Boyle, Ryan, Brickley, and Cavanagh.

in what is known colloquially as "statutory rape" cases.[5] The Constitution has not since changed, nor has the statute in any way significant to the issue. And so the question of the continued "viability" of *Cash* is whether it was wrongly decided and ought to be overruled—it cannot have been correctly decided at that time but wrong now. But *Cash* was not wrongly decided; further, under principles of *stare decisis* there is no basis to revisit it.

Discussion

A. The policy nature of defendant's claim

Points defendant makes in support of his claim are instructive. Defendant wishes this Court to revisit *Cash* because "the world has changed substantially since 1922 and 1984" so that the "social mores and societal conditions of 1922 or 1984 are incompatible with the societal norms and social mores of the beginning of the 21st century,"[6] because "with the physical maturation of today's teens the ability of the state to protect and the need for the state to protect has greatly diminished,"[7] because some other states have *legislatively* established a reasonable-mistake-of-age defense,[8] for reasons rejected by *Cash*, and for reasons that are not relevant.[9] Essentially, defendant treats this

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[5] "[D]efendant directly attacks the constitutionality of the above statute on due process grounds for imposing criminal liability without requiring proof of specific criminal intent, i.e., that the accused know that the victim is below the statutory age of consent. . . . Contrary to defendant's contention, the mistake-of-age defense, at least with regard to statutory rape crimes, is not constitutionally mandated." *People v. Cash,* 419 Mich. at 239, 245.

[6] Application, at iv.

[7] Application, at 11.

[8] Application, at i.

[9] See discussion of *Lawrence v Texas*, 539 US 558, 123 S.Ct. 2472, 156 L.Ed.2d 508 (2003).

Court as though it were a legislative committee, considering whether the statute should be amended, and indeed asks the Court in essence to amend the statute by creating a mistake-of-age defense that distinguishes between offenses charged involving victims over the age of 13 and those 13 and younger, mistake of age not being a defense for the latter.[10] Defendant does not really believe, then, that the offense cannot constitutionally be a "strict liability" offense; he would simply, as a matter of policy, drawn the age line differently. And so it is for the Court, in defendant's view, rather than for the legislature, to draw the age line,[11] and to do so as a matter of constitutional law, this authority apparently coming from an "'obligation [of the courts, including this Court] . . . to define the liberty of all, not to mandate our own moral code."[12] But "[i]In a democracy, the people (through the political branches of government) may resolve hard questions as well as easy ones,"[13] and the line-drawing that defendant requests the Court to engage in—substituting the moral code he urges for that of the People's elected political representatives—is quintessentially legislative.

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[10] Defendant's reply brief, at 5: the court can "permit a defense of reasonable mistake of fact or mistake of age as it relates to those adolescents over 13 and apply strict liability to those 13 and younger without a change in the existing statute."

[11] One is put in mind of Justice Holmes statement that "If you . . . want a certain result with all your heart you naturally express your wishes in law and sweep away all opposition," here substituting "the constitution" for "law." *Abrams v. United States*, 250 U.S. 616, 40 S.Ct. 17, 22, 63 L.Ed. 1173 (1919) (Holmes, J., dissenting).

[12] Defendant's reply brief, at 5, quoting *Lawrence v. Texas*, 539 U.S. 558, 571, 123 S.Ct. 2472, 2480, 156 L.Ed.2d 508 (2003).

[13] *Mays v. City of East St. Louis, Ill.*, 123 F.3d 999, 1003 (CA 7, 1997).

B. The statute violates neither equal protection nor due process, as the roots of statutory rape with no mistake-of-age defense are deep and wide

1. The lack of a mistake-of-age defense does not deny equal protection

Defendant faults the People for, in their answer to the application, relying "only" on *Cash*—though in fact the People pointed out that only Alaska had found a mistake-of-age defense constitutionally mandated, that that decision was based on the state constitution, that many states reject a mistake-of-age defense, and that those that accept it have almost universally done so statutorily—but defendant makes no serious argument that the statute as construed by *Cash* violates principles of equal protection.[14] There is no argument that defendant is treated differently from others who are similarly situated in an arbitrary manner; indeed, the only equal-protection claims the People can locate regarding a mistake-of-age defense relate to *distinctions* in age, where the defense is allowed with regard to minors of a certain age but disallowed below a particular age—precisely what defendant proposes—and it has been rejected there.[15] The statute here treats all those who violate it in the same manner, and so defendant's claim must be one of due process. In all events, it fails.

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[14] The due process and equal protection provisions of the Michigan Constitution have been held to be coextensive with those in the Federal Constitution. "The equal protection clauses of the United States and Michigan Constitutions are coextensive." *People v. Idziak*, 484 Mich. 549, 570 (2009); "This state's Due Process Clause provides protection coextensive with its federal constitutional counterpart. People v. Sierb, 456 Mich. 519, 523, 581 N.W.2d 219 (1998); English v. Blue Cross Blue Shield of Michigan, 263 Mich.App. 449, 459–460, 688 N.W.2d 523 (2004)." *By Lo Oil Co. v. Department of Treasury*, 267 Mich.App. 19, 32 (2005); " . . . the Michigan Constitution does not provide greater protection than the federal due process guarantee." *English v. Blue Cross Blue Shield of Michigan*, 263 Mich.App. 449, 459-460 (2004).

[15] See e.g. *United States v. Ransom*, 942 F.2d 775, 777 -778 (CA 10, 1991).

2. The lack of a mistake-of-age defense does not deny due process

Defendant fails to demonstrate that due process requires judicial creation of a mistake-of-age defense, one that defendant would have apply to 14 and 15 year-old victims, but not those 13 years of age and below. Defendant shows no deeply-rooted historical practice from which the state has departed.[16] In *Montana v. Egelhoff*[17] the Court rejected a claim that a defendant has a due-process right to have the jury consider evidence of voluntary intoxication in determining whether he or she possessed the mental state required for conviction as not a "fundamental principle of justice," so that Montana's statutory ban on consideration of that evidence did not violate due process. The Court observed that its "primary guide in determining whether the principle in question is fundamental is, of course, historical practice. . . . Here that gives respondent little support. By the laws of England, wrote Hale, the intoxicated defendant 'shall have no privilege by this voluntary contracted madness, but shall have the same judgment as if he were in his right senses.'"[18] So here; historical practice gives defendant's claim no support whatever.

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[16] "If the government chooses to follow a historically approved procedure, it necessarily provides due process, but if it chooses to depart from historical practice, it does not necessarily deny due process." *Pacific Mut. Life Ins. Co. v. Haslip,* 499 U.S. 1, 31-32, 111 S.Ct. 1032, 1050, 113 L Ed.2d 1 (1991) (Scalia concurring). And see *People v. Kevorkian*, 447 Mich. 436 (1994); *People v. Pegenau*, 447 Mich. 278 (1994).

[17] *Montana v. Egelhoff*, 518 U.S. 37, 43-44, 116 S.Ct. 2013, 2017 - 2018, 135 L. Ed 2d 361 (1996).

[18] *Montana v. Egelhoff*, 116 S.Ct. at 2017 - 2018 (per Justice Scalia, with the Chief Justice and two other Justices concurring, and one Justice concurring in the judgment).

Defendant cites *Morissette v United States*[19] in support of his claim, and in so doing is grievously wounded in the house of his friends,[20] for *Morissette* plays him false. Defendant quotes the statement in *Morissette* that "[t]he contention that an injury can amount to a crime only when inflicted by intention is no provincial or transient notion. It is as universal and persistent in mature systems of law as belief in freedom of the human will and a consequent ability and duty of the normal individual to choose between good and evil."[21] But defendant ignores the further recognition in the opinion that there are exceptions to this principle; "[e]xceptions came to include sex offenses, such as rape, in which *the victim's actual age was determinative despite defendant's reasonable belief that the girl had reached age of consent*."[22] Indeed, as one federal case, *United States v Brooks*, has cogently put the matter, rejecting the same claim raised by defendant here:

> The decision in *Morissette v. United States* . . . upon which Brooks relies, *weakens rather than strengthens his position*. In that case the Court refused to read a strict liability element into a statute against "knowing conversion" of government property. It did so in large part because of parallel statutory terms against embezzlement, stealing, and purloining, all of which had long contained an element of mens rea. The Court held that the statute could not fairly be read to create a strict liability offense under only one of its several parallel prohibitions without saying so explicitly. . . . But because statutory rape was universally regarded as a strict liability offense until well into the twentieth century, *Morissette*'s holding that *a court must*

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[19] *Morissette v United States*, 342 U.S. 246, 72 S.Ct. 240, 96 L.Ed. 288 (1952).

[20] Bible, Zechariah 13:6.

[21] *Morissette*, 72 S.Ct. at 243.

[22] *Morissette*, 72 S.Ct. at 244 (emphasis supplied). See also *U.S. v. X-Citement Video, Inc*., 513 U.S. 64, 72, 115 S.Ct. 464, 469, 130 L.Ed.2d 372 (1994): "*Morissette*'s treatment of the common-law presumption of mens rea recognized that the presumption expressly excepted 'sex offenses, such as rape, in which the victim's actual age was determinative despite defendant's reasonable belief that the girl had reached age of consent.'"

> *presume that Congress adopts the common meanings of the terms it uses, . . . fortifies the conclusion we have drawn with respect to the construction of section 2032*[23] [that "The statutory language is clear: sexual intercourse with a female under sixteen years of age is prohibited. There is no mention of a defense for reasonable mistake of age. Nor does the history of this offense indicate that this court should find an implied element of specific knowledge concerning the victim's age"].[24]

Brooks hardly stands alone, for "federal courts uniformly have rejected claims that the Constitution requires the government to prove that a defendant charged with statutory rape knew that the victim was underage, or that such a defendant has a constitutional right to the defense that he made a reasonable mistake as to the victim's age."[25] This is because "the offense is generally considered an extension of the common law crime of forcible rape and is itself 'old enough to be a part of the common law of this country.'"[26]

The legislature's authority to define crimes and ordain punishments includes the authority to "exclude elements of knowledge and diligence from its definition."[27] As the 10th circuit has well put it, "[i]n order to show that the exercise of that power is inconsistent with due process," one attacking it must "demonstrate that the practice adopted by the legislature 'offends some principle

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[23] *United States v. Brooks*, 841 F.2d 268, 270 (CA 9, 1988) (emphasis supplied).

[24] *Brooks*, 841 F.2d at 269.

[25] *United.States v. Wilcox*, 487 F.3d 1163,1174 (CA 8, 2007).

[26] *Brooks*, 841 F.2d at 269, citing R. Perkins, *Criminal Law* 152 (2d ed. 1969).

[27] *United States v. Ransom*, 942 F.2d at 776, quoting *Lambert v. California*, 355 U.S. 225, 228, 78 S.Ct. 240, 242, 2 L.Ed.2d 228 (1957).

of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental.'"[28] But this is not the case with the absence of a mistake-of-age defense for statutory rape, as "[t]he history of the offense of statutory rape indicates that from ancient times the law has afforded special protection to those deemed too young to understand the consequences of their actions. The more prevalent view seems to be that these statutory provisions did not require the prosecution to show that a defendant believed the victim to be under the lawful age of consent and that no defense was allowed for a reasonable mistake of age. . . . The weight of authority in this country indicates that statutory rape has traditionally been viewed as a strict liability offense."[29] And so, said the court, "[t]he long history of statutory rape as a recognized exception to the requirement of criminal intent undermines appellant's argument that the statute in question offends principles of justice deeply rooted in our traditions and conscience."[30] Further,"the statute rationally furthers a legitimate governmental interest. It protects children from sexual abuse by placing the risk of mistake as to a child's age on an older, more mature person who chooses to engage in sexual activity with one who may be young enough to fall within the statute's purview."[31]

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[28] *United States v. Ransom*, 942 F.2d at 777, citing *Snyder v. Massachusetts*, 291 U.S. 97, 105, 54 S.Ct. 330, 332, 78 L.Ed. 674 (1934).

[29] *United States v. Ransom*, 942 F.2d at 777.

[30] *United States v. Ransom*, 942 F.2d at 777.

[31] *United States v. Ransom*, 942 F.2d at 777. See also *State v. Martinez,* 14 P.3d 114, 119 -120 (Utah App., 2000): "We simply cannot say that our legislature's determination to preclude the mistake of age defense for sexual activity with a minor fourteen or fifteen is so arbitrary as to run afoul of the Constitution. [It] . . . offends no deeply-rooted and fundamental tradition of due process. Children have historically received special protection from sexual contact with adults. . . . '[p]rior to 1964, it was the universally accepted rule in the United States that a defendant's mistaken belief as to the age of a victim was not a defense to a charge of statutory rape. . . . Our state legislature . . . has a legitimate interest in protecting the health and safety of our children."

Simply put, defendant's federal due process claim finds no support anywhere.[32]

3. *People v Cash* was thus correctly decided

"Carnal knowledge" of one under the age of consent, that individual being legally incapable of consent, was rape at the common law, and was also made rape by statute.[33] This Court in *People v. Gengels*[34] simply followed the unanimous understanding in so recognizing. In *Cash*, this Court undertook to determine whether, in enacting the criminal sexual conduct statutes, the legislature had in any way modified this ancient understanding, and concluded it had not, for "a general rule of statutory construction is that the Legislature is 'presumed to know of and legislate in harmony with existing laws,'" and so the "Legislature must have been aware of our earlier decision rejecting the reasonable-mistake-of-age defense under the old statutory rape statute. Had the Legislature desired to revise the existing law by allowing for a reasonable-mistake-of-age defense, it could have done so, but it did not do so. This is further supported by the fact that under another provision of the same section of the statute, concerning the mentally ill or physically helpless rape victim, the Legislature specifically provided for the defense of a reasonable mistake of fact by adding the language that the actor 'knows or has reason to know' of the victim's condition where the prior statute contained no

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[32] And see e.g. *United States v. Fletcher*, 634 F.3d 395 (CA 7, 2011); *United States v Juvenile Male*, 211 F.3d 1169 (CA 9, 2000); *Fleming v. State*, 455 S.W.3d 577 (Texas, 2014); *State v Browning*, 629 S.E.2d 299 (NC. App, 2006); *State v. Stiffler*, 788 P.2d 220, 226 (Idaho, 1990); *Goodrow v. Perrin*, 403 A.2d 864 (N.H., 1979).

[33] *People v McDonald*, 9 Mich 150 (1861). And see *People v. Starks*, 473 Mich. 227, 229-230 (2005)): "The complainant, who was thirteen years old at the time of the incident, could not consent to an act of fellatio. Because *a thirteen-year-old child cannot consent to sexual penetration, consent by such a victim is not a defense to the crime of assault with intent to commit criminal sexual conduct involving sexual penetration*" (emphasis supplied).

[34] *People v. Gengels*, 218 Mich. 632 (1922).

requirement of intent. The Legislature's failure to include similar language under the section of the statute in question indicates to us the Legislature's intent to adhere to the *Gengels* rule that the actual, and not the apparent, age of the complainant governs in statutory rape offenses."[35]

This continuation of the "no mistake-of-age" statutory regime,[36] this Court continued, did not deny due process to the accused, finding that "the mistake-of-age defense, at least with regard to statutory rape crimes, is not constitutionally mandated,"[37] emphasizing that this holding was in line with "the preponderant majority of jurisdictions, both state and federal" which also had "upheld against due process challenges their respective statues' imposition of criminal liability without the necessity of proving the defendant's knowledge that the victim was below the designated age."[38] This Court was correct then, and *Cash* remains correct today. Nothing of jurisprudential significance has happened in the country to suggest that *Cash* should be revisited.

Defendant cites *Lawrence v. Texas*[39] as somehow invalidating the prior understanding of the mistake-of-age defense. But that case is wholly irrelevant here. Defendant fails to note that the Court there specifically limited its holding: "*The present case does not involve minors*. It does not

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[35] *People v. Cash*, 419 Mich. at 240-241.

[36] The Court noted that in creating the criminal conduct statutes "the age of the victim was carefully considered [by the Legislature] in defining and establishing the severity of the criminal conduct. The age of the victim is balanced against then ature of the sexual conduct to establish a graduated system of punishment." *People v. Cash*, 419 Mich. at 242-243.

[37] *People v. Cash*, 419 Mich. at 245. The Court quoted and agreed with the rationale of *Nelson v. Moriarty*, 484 F.2d 1034, 103501036 (CA 1, 1973) that there was no support in the law for a finding that the constitution compels a mistake-of-law defense.

[38] *People v. Cash*, 419 Mich. at 246.

[39] *Lawrence v. Texas*, 539 U.S. 558, 123 S.Ct. 2472, 156 L.Ed.2d 508 (2003).

involve persons who might be injured or coerced or who are situated in relationships where consent might not easily be refused. It does not involve public conduct or prostitution. . . . The case does involve two adults who, with full and mutual consent from each other, engaged in sexual practices common to a homosexual lifestyle."[40] *Lawrence* thus has no bearing on mistake-of-fact in statutory rape cases.[41]

C. Conclusion: *Cash* is correct, and stare decisis principles counsel against revisiting it

Application of principles of *stare decisis* to *Cash* should end with the first point in the inquiry, as *Cash* simply was not wrongly decided. An important factor in determining that question is whether the precedent was well reasoned.[42] Given its consistency with the virtually uniform view in the country at that time—and since—it cannot be said that *Cash* was poorly reasoned. And no jurisprudential developments have intervened that undercut *Cash*; indeed, quite the contrary is true, as it remains the case that courts uniformly reject due process claims to a mistake-of-age defense. *Cash* is a well-reasoned, workable precedent, of 31 years vintage. There is no reason to revisit it.[43]

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[40] *Lawrence v. Texas*, 124 S.Ct. at 2484 (emphasis supplied).

[41] See *State v. Browning,* 629 S.E.2d 299 (N.C.App., 2006), so holding.

[42] "Beyond workability, the relevant factors in deciding whether to adhere to the principle of stare decisis include the antiquity of the precedent, the reliance interests at stake, and of course whether the decision was well reasoned." *Montejo v. Louisiana,* 556 U.S. 778, 792-793, 129 S.Ct. 2079, 2089, 173 L.Ed.2d 955 (2009). And see *Robinson v. Detroit*, 462 Mich. 439 (2000); *People v. Tanner,* 496 Mich. 199 (2014).

[43] The People would note that a holding that due process requires a mistake-of-age defense would affect more than just the statute at issue here. MCL § 750.145a provides that "A person who accosts, entices, or solicits a child less than 16 years of age, *regardless of whether the person knows the individual is a child or knows the actual age of the child*, or an individual whom he or she believes is a child less than 16 years of age with the intent to induce or force that child or individual to commit an immoral act, to submit to an act of sexual intercourse or an act of gross indecency, or to any other act of depravity or delinquency, or who encourages a child

It is clear, in any event, that defendant's arguments are policy arguments that should be addressed to the legislature. He speaks of alleged changes in "social mores" as compelling the result he desires, but as one court has correctly noted, "It should be noted at the outset that *we are not concerned with the wisdom of the present law's policy in view of today's sexual mores*. Instead, we are concerned only with whether the current law violates the Constitution by not allowing for a defense of honest or reasonable mistake. We hold that it does not. By enacting the applicable portions of RSA 632-A:3 (Supp.1977), the legislature has made the doing of an act a crime without mens rea. We believe that the legislature had the power to do so. A reasonable and honest belief that a person is over the age of consent is not a defense that arises to 'constitutional dimensions.'"[44] In Michigan, the legislature has drawn the line for consent at 16. Defendant thinks "changing times" make 13 a wiser choice, allowing a mistake-of-age defense for 14 and 15 year-old victims, but not those 13 and below.[45] That argument is one of policy for the elected political branches, not one of

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less than 16 years of age, *regardless of whether the person knows the individual is a child or knows the actual age of the child,* or an individual whom he or she believes is a child less than 16 years of age to engage in any of those acts is guilty of a felony . . . " The statute has never provided a mistake-of-age defense, and when amended in 2002 to include actors acting with persons they *believe* are under the age 16 (i.e. decoys), specific language was added stating that the actor is guilty "regardless of whether the person knows the individual is a child or knows the actual age of the child." Overruling of *Cash* would also nullify the legislature's act here.

[44] *Goodrow v. Perrin*, 403 A.2d 864, 868 (N.H., 1979) (emphasis added).

[45] The People have attached a chart regarding the state of the law in the country concerning a mistake-of-age defense, drawn largely from *United States v Wilson*, 66 M.J 39 (2008), with some updating. This chart shows that a great many states have no mistake-of-age defense, and some do, though generally limited to certain ages; that is, there is an age below with mistake-of-age as a defense will not apply—and they do so legislatively. These differing approaches are a hallmark of federalism. See *United States v. Lopez*, 514 U.S. 549, 581, 115 S.Ct. 1624, 1641, 131 L.Ed.2d 621 (1995). Defendant would move Michigan into the limited mistake-of-age camp. But rather than making policy arguments to the legislature, he wishes this Court to do the work for him. It should not.

law for the judiciary. Leave should be denied, so that this case, which has yet to be tried, may finally be concluded in the circuit court.

Relief

WHEREFORE, the People request this Honorable Court to speedily deny leave to appeal, so that this case may proceed to conclusion in the circuit court.

Respectfully submitted,

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Table

State	MISTAKE OF AGE DEFENSE?	IF SO, HOW CREATED	CASE
Alabama	No		See Miller v State, 79 So. 314 (Ala., 1918)
Alaska	Yes; affirmative defense. Alaska Stat. § 11.41.445(b). Requires that defendant "undertook reasonable measures to verify that the victim was that age [age below which conduct constitutes an offense] or older"	Lack of defense held to violate state constitution; defense then codified	See State v. Fremgen, 914 P.2d 1244 (Alaska,1996)
Arizona	Yes; affirmative defense; inapplicable for victim under the age of 15. Ariz.Rev. Stat. § 13-1407	Statutorily	See State v. Falcone, 264 P.3d 878 (Az, 2011)
Arkansas	Yes; affirmative defense; inapplicable for victim under the age of 15. Ark. Code § 5-14-102	Statutorily	See Wright v. State, 254 S.W.3d 755 (Ark.App.,2007)
California	Yes; affirmative defense; inapplicable for victim under the age of 14.	Judicially	See People v Hernandez, 393 P.2d 673 (CA, 1964); People v Olsen, 685 P.2d 82 (CA, 1984)

Colorado	Yes, affirmative defense; inapplicable for victim under the age of 15, or where defendant in a position of trust. Colo.Rev.Stat. § 18-1-503.5	Statutorily	See People v. Grizzle, 140 P.3d 224 (Colo.App.,2006)
Connecticut	No		See State v. Blake, 777 A.2d 709 (Conn.App.,2001)
Delaware	No		See Brown v. State, 74 A. 836 (Del. 1909)
Florida	No		Statutorily forbidden. Fla. Stat. § 794.021
Georgia	No		See Haywood v. State, 642 S.E.2d 203 (Ga.App.,2007)
Hawaii	No		See State v. Buch, 926 P.2d 599 (Hawaii,1996)
Idaho	No		See State v. Stiffler, 788 P.2d 220 (Idaho,1990)
Illinois	Yes, affirmative defense; inapplicable to victims under the age of 17. Ill.Comp. Stat. 5/11-1.70.	Statutorily	See People v. Uptain, 816 N.E.2d 797 (Ill.App. 4 Dist.,2004)

Indiana	Yes; affirmative defense. Ind.Code Ann. § 35-42-4-3(d) Reasonable belief defense, except under certain circumstances	Statutorily	See Sloan v. State, 16 N.E.3d 1018 (Ind.App.,2014)
Iowa	No		See State v. Tague 310 N.W.2d 209 (Iowa, 1981)
Kansas	No		Statutorily forbidden. Kan. Stat. Ann. § 21-3202
Kentucky	Yes Ky.Rev.Stat. § 510.030	Statutorily	See Hughes v. Com., 445 S.W.3d 556 (Ky.,2014)
Louisiana	No		Statutorily forbidden. La.Rev.Stat. § 14:80C
Maine	Yes, affirmative defense; inapplicable under certain circumstances where victim "in fact" a certain age. Me.Rev.Stat. 17-A §§ 253, 254	Statutorily	See State v. Wiley, 61 A.3d 750 (Me.,2013)
Maryland	No		See Walker v. State 768 A.2d 631 (Md.,2001)
Massachusetts	No		See Com. v. Knap, 592 N.E.2d 747 (Mass.,1992)
Michigan	No		See People v. Cash, 351 N.W.2d 822 (1984)

Minnesota	Yes, affirmative defense; inapplicable for victim under the age of 16. Minn.Stat. Ann. § 609.344	Statutorily	See State v. Kramer, 668 N.W.2d 32 (Minn.App.,2003)
Mississippi	No		See Collins v. State, 691 So.2d 918 (Miss.,1997)
Missouri	Yes, affirmative defense; inapplicable for victim under the age of 14. Mo.Ann.Stat. § 566.020		See State v. Campbell, 356 S.W.3d 774 (Mo.App. E.D.,2011)
Montana	Yes, affirmative defense; inapplicable for victim under the age of 14. Mont.Code Ann. § 45-5-511		See State v. Muhammad, 121 P.3d 521 (Mont.,2005)
Nebraska	No		See State v. Campbell, 473 N.W.2d 420 (Neb.,1991)
Nevada	No		See Jenkins v. State, 877 P.2d 1063 (Nev.,1994)
New Hampshire	No		See State v. Holmes, 920 A.2d 632 (N.H.,2007)
New Jersey	No		Statutorily forbidden. N.J. Stat.Ann § 2C:14-5.c
New Mexico	Yes	Judicially (it appears)	See Perez v. State, 111 N.M. 160, 803 P.2d 249 (N.M.,1990)

New York	No		Statutorily forbidden. N.Y. Penal Law § 15.20
North Carolina	No		See State v. Anthony, 528 S.E.2d 321 (N.C.,2000)
North Dakota	Yes, affirmative defense; inapplicable for victim under the age of 15. N.D. Cent.Code § 12.1-20-01	Statutorily	See State v. Vandermeer, 843 N.W.2d 686 (N.D.,2014)
Ohio	Yes, affirmative defense; inapplicable for victim under the age of 13. Ohio rev. Code § 2907.02, 2907.04.	Statutorily	See State v. Tooley, 872 N.E.2d 894 (Ohio,2007)
Oklahoma	No		See Reid v. State, 290 P.2d 775 (Okl.Cr.App. 1955)
Oregon	Yes, affirmative defense; inapplicable for victim under the age of 16. Or.Rev.Stat. § 163.325	Statutorily	See State v. Hoehne, 717 P.2d 237 (Or.App.,1986)
Pennsylvania	Yes, affirmative defense; inapplicable for victim under the age of 14. 18 Pa. Cons. Stat. § 3102	Statutorily	See Com. v. Hacker, 15 A.3d 333 (Pa.,2011)
Rhode Island	No		See State v. Yanez, 716 A.2d 759 (R.I.,1998)
South Carolina	No		See Toomer v. State, 529 S.E.2d 719 (S.C.,2000)

South Dakota	No		State v. Fulks, 160 N.W.2d 418 (S.D. 1968)
Tennessee	Yes, affirmative defense; inapplicable for victim under the age of 13. Tenn.Code Ann. § 39-11-502		See State v. Ealey. 959 S.W.2d 605 (Tenn.Crim.App., 1997)
Texas	No		See Roof v. State 665 S.W.2d 490 (Tex.Criminal App.,1984)
Utah	No		Statutorily forbidden. Utah Code Ann. § 76-2-304.5
Vermont	No		See State v. Hazelton, 915 A.2d 224 (Vt.,2006)
Virginia	No		See Rainey v. Com., 193 S.E. 501 (Va. 1937)
Washington	Yes, affirmative defense; not a complete defense, but reduces offense depending on age and circumstances under statute. Wash.Rev. Code § 9A.44.030	Statutorily	See State v. Dodd, 765 P.2d 1337 (Wash.App.,1989)
West Virginia	Yes, affirmative defense; inapplicable under ceertain circumstances W.Va.Code § 61-8B-12	Statutorily	See State v. Jones, 742 S.E.2d 108 (W.Va.,2013)
Wisconsin	No		Statutorily forbidden. Wis.Stat.Ann. § 939.43

Wyoming	Yes, affirmative defense; inapplicable for victims under the age of 14. Wyo.Stat. § 6-2-308.	Statutorily	See Phillips v. State, 151 P.3d 1131 (Wyo.,2007)
DC	No		Statutorily forbidden; see D.C. Code 22-3011